TESTIMONY TO THE COMMITTEE ON GENERAL LAW
IN SUPPORT OF HB 5345 AN ACT CONCERNING HOMEMAKER COMPANION AGENCIES AND CONSUMER PROTECTION
February 21, 2013

Senator Doyle, Representative Baram, and members of the Committee on General Law, I am John C. Wirzbicki, at attorney with Brown Jacobson PC of Norwich, Connecticut and I am submitting this statement in support of HB 5345 AN ACT CONCERNING HOMEMAKER COMPANION AGENCIES AND CONSUMER PROTECTION.

I first became interested in this issue as a result of my representation of one of Representative Elizabeth Ritter's constituents, who was being sued by a Homemaker Companion Agency. I was contacted by my client on the eve of a scheduled trial, and I agreed to take the case on a pro bono basis, assuming she could get the trial postponed. She was able to do that, and I did become involved. We eventually settled the case (one reason we settled was that my client was physically unable to attend a trial, and would have had to pay a substantial sum to have her testimony submitted by videotaped deposition), but I believe this case exposed some weaknesses in the way in which Homemaker Companion Agencies are presently regulated.

My client first became involved with the Homemaker Agency in question in 2009. She was in a nursing home following surgery. Her condition was such that in the words of her doctor:

> She has a deteriorated spine which leads to chronic pain and leaves her often bedbound/wheelchair bound. She has a colostomy and this needs much constant care and supplies. Lastly, due to absorption problems she has daily TPN and her port needs chronic care and needs t be cared for and changed under sterile techniques on a daily basis.

TPN refers to "Total parenteral nutrition". Basically she was unable to digest food.

When she was in the nursing home my client was approached by a "consultant" who offered to help her find appropriate care to enable her to live independently. He signed her up for services from a Homemaker Companion Agency (which I'll refer to hereafter as "the Agency"). I do not know for sure, but I assume this person received a commission for his work. My client was assured that the two insurance policies she had would cover the services that she would receive, and that the services she would receive would be appropriate for her needs. In fact, her insurance policies provided almost no coverage, and it was for that reason she was eventually sued. Of course, the representations made to her were not in writing, so she could not conclusively prove that they were made.

I want to pause here and point out that it is hard to conceive of a person in a more vulnerable position than was my client at that moment. She is a very bright, articulate and determined person, but nonetheless she was in a nursing home recovering from major

surgery and in no position to make an informed decision regarding her home care, not to mention research into the proper agency to provide that care. She was certainly in a far more vulnerable position than someone entering into a Home Solicitation Sales Contract, but she had far less statutory protection.

My client experienced many problems, but they can be classified within two main areas of concern: misrepresentations regarding her insurance coverage and quality of care.

It is not clear to me whether there is any effective way to prevent the type of misrepresentations that were made to my client. However, I believe that there may be at least some steps that can be taken to protect people such as my client when they get into these situations. I'm sure she's not the first person who has entered into this kind of agreement at a time when they were very vulnerable. A sick person in a nursing home is not in the best of positions to look after his or her own interests.

The provisions of 20-679 of the General Statutes provide certain requirements for the contract between the provider and the person receiving services. The statute contains a list of required contractual provisions. This list is reminiscent of a similar sort of list that is contained in the Home Improvement Act. However, the Home Improvement Act is very specific that a contract that does not contain certain of the required terms is unenforceable. In the case of 20-679 the statute provides only that the contract is not valid if it is not signed. This is not much help and doesn't add much protection, because even in the absence of a statute, a contract is generally not valid if it is not signed by the parties. In my client's case, her contract did not contain much of the information required by the statute. Given the way the statute is worded, it would have been difficult to argue that the contract was therefore unenforceable. This renders the statutory requirements somewhat toothless. If compliance were a condition precedent to a company's right to enforce their agreements, there would probably be more compliance. I understand that sanctions can presently be imposed by the Department of Health, but that will not always happen.

Again, there is probably no way to prevent the type of misrepresentations made to my client regarding insurance. However, there are a couple of ways that they might be discouraged, and their harmful effects mitigated. First, the company could be required to place a bold faced warning in their contract to the effect that they can make no representations regarding the extent to which the services provided will be entitled to insurance coverage. Second, as in many other consumer contexts, it might be a good idea to give the consumer a right to cancel. In this particular context, it seems to me that the consumer should have a right to cancel at any time. Right now the statute provides that the contract must provide a statement of its duration. No such statement was in my client's contract, so presumably she could have simply cancelled it, though she may not have known that. In those cases in which the contract actually complies with the law, and the duration is spelled out, the consumer might be stuck getting services for which they cannot pay, and that they do not need.

This brings us to the second problem: quality of care. Another provision of the law requires disclosure to the consumer of "the employees of such agency who, pursuant to section 20-

678 are required to submit to a comprehensive background check". So far as I can see, my client never got such a notice, but even had she received one it is not clear that the consumer is entitled to notice of the content of those background checks. Since every employee must submit to such a check, a statement to that effect to the consumer is fairly meaningless, if they do not have the right to know what the check revealed. In my client's case, at least one of the persons who cared for her in her home had a serious felony on her record for possession of narcotics. Given the fact that these individuals not only come into the client's home, but often basically live there, this would appear to be unacceptable. Also, while the statute requires that potential employees submit to "comprehensive background check[s]", it appears from the documents that I was provided through discovery that in my client's case, the "comprehensive background check" consisted of a search through the Connecticut court databases. The Agency appears to have further restricted at least some of its searches to local courts. The statute does not include a definition of "comprehensive background check" and it appears to me that the checks are therefore far less than what some might consider comprehensive. The individuals providing these services are often working at or near minimum wage. The employer has an incentive to ask few questions when hiring.

My client related to me that the individuals who were assigned to her house had no training and could not provide the services that she needed. The documents I was provided through discovery seem to bear this out, as I asked for information regarding training, and none was produced. I therefore assume that these people were not trained in any meaningful fashion. So far as I am aware there is no licensing or registration requirements for the individual employees.

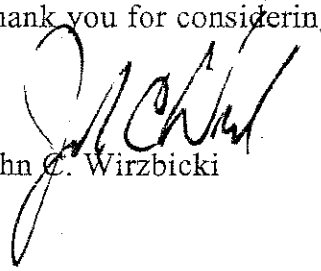
In the case of my client, the level of care that the Agency could provide was not sufficient for her needs, though she was assured to the contrary. Certainly she needed more help than untrained "homemaker-companions" could provide. These companions are not medical personnel and could not, for instance, assist her with her daily TPN. It appears from the documents that I received in discovery, that it was left to the Agency itself to define the services and level of care that my client needed. I believe that some consideration might be given to treating these services somewhat like I believe we treat physical therapists. Perhaps a doctor should prescribe the level of care, much like they prescribe the need for physical therapy.

Finally, I noted in reviewing the discovery, that my client was charged more if the services she got were provided by a licensed CNA, even though the nature of the services that individual performed were identical to those provided by the non-licensed individual. That is, the CNA provided homemaker-companion services and not skilled services. That is like paying lawyer's rate to someone who is cleaning your house because he or she happens to be a law school graduate.

In my own opinion, these are the types of problems that will inevitably occur when for-profit entities provide health related services. If such entities must be involved in providing such services, it is essential that the state step in to protect the vulnerable populations that they serve. I believe Representative Ritter's proposal would address these issues in a

reasonable fashion. It might not prevent all abuses, but it would certainly make it more unlikely for them to occur, and would provide redress for vulnerable consumers.

Thank you for considering the above.



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